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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/520,275	11/23/2005	Margaret F Hudson	10704-19 MIS:jb	9004
24223	7590	04/06/2009		
SIM & MCBURNEY 330 UNIVERSITY AVENUE 6TH FLOOR TORONTO, ON M5G 1R7 CANADA			EXAMINER WEIER, ANTHONY J	
			ART UNIT	PAPER NUMBER
			1794	
			MAIL DATE	DELIVERY MODE
			04/06/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/520,275

**Applicant(s)**

HUDSON ET AL.

**Examiner**

Anthony Weier

**Art Unit**

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 2, 5-7, 15, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Pickford.

Said claims are rejected for the reasons set forth in the last Office Action (mailed 8/28/08) along with the following. Although it is noted that instant claim 5 now uses language that appears to limit the instant claims (i.e. a food grade binder consisting essentially of liquid albumen and gelatin), same does not exclude the presence of other material such as starches, as set forth in Pickford, which provide, for example, production assistance in the same way that the instant claims (e.g. claim 10) further include such material. It should be noted that the stabilizer employed in Pickford provides two purposes: (1) preventing or limiting the escape of moisture from the product during microwave heating and (2) maintaining the structure integrity such that the shape of the product is not lost during cooking (col. 3, lines 4-9). The claims do not exclude the presence of ingredients which would facilitate the prevention of moisture escaping such as starch or cellulose ingredients which are known in the prior art for

such purpose.<sup>1</sup> In fact, the instant invention further positively recites the presence of such ingredients (e.g. starch) in claim 10, for example. Similar to Pickford, the original specification refers to the presence of gum and starch to assist in moisture control of the product (paragraph 12).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3, 4, 8-14, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pickford taken together with Rapp et al.

Said claims are rejected for the reasons set forth in the last Office Action (mailed 8/28/08) and as set forth above.

5. Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pickford taken together with Pilgrim et al and Schneideler et al.

Said claims are rejected for the reasons set forth in the last Office Action (mailed 8/28/08) and as set forth above.

***Response to Arguments***

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<sup>1</sup> See Fenney et al (col. 3, and col. 14, lines 43-54) which recites the use of cellulosic material to retain moisture in foods that are subjected to microwave heating. Emoto et al similarly recites the use of cellulose material in foods for the retention of water (9col. 4, lines 43-68)

6. Applicant's arguments filed 1/26/09 have been fully considered but they are not persuasive. Same have been addressed in view of the rejections set forth above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Anthony Weier  
Primary Examiner  
Art Unit 1794

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/Anthony Weier/  
Primary Examiner, Art Unit 1794

Anthony Weier  
April 3, 2009